CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86420 to 86440 of 2014

(Arising out of Order-in-Appeal No. 944 to 1014 (Gr.III)/2014(JNCH)/IMP-906 to 976 dated 11.03.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Everflow Petrofils Ltd. **.... Appellant**
11, Oval Wadi, Vithal Wadi, 3rd Floor,
Room No. 50, Kalbadevi Road,
Mumbai – 400 002

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Uran, Dist. - Raigad,
Maharashtra – 400 707

WITH

Customs Appeal No. 86611 to 86630 of 2014

(Arising out of Order-in-Appeal No. 944 to 1014 (Gr.III)/2014(JNCH)/IMP-906 to 976 dated 11.03.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Everflow Petrofils Ltd. **.... Appellant**
11, Oval Wadi, Vithal Wadi, 3rd Floor,
Room No. 50, Kalbadevi Road,
Mumbai – 400 002

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Uran, Dist. - Raigad,
Maharashtra – 400 707

AND

Customs Appeal No. 86858 to 86887 of 2014

(Arising out of Order-in-Appeal No. 944 to 1014 (Gr.III)/2014(JNCH)/IMP-906 to 976 dated 11.03.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Everflow Petrofils Ltd. **.... Appellant**
11, Oval Wadi, Vithal Wadi, 3rd Floor,
Room No. 50, Kalbadevi Road,
Mumbai – 400 002

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Uran, Dist. - Raigad,
Maharashtra – 400 707

Appearance:

Shri A.K. Prabhakar, Advocate for the Appellants

Shri Sunil Jain, Pr. Commissioner, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85365-85435/2025

Date of Hearing: 28.01.2025

Date of Decision: 28.01.2025

PER: S.K. MOHANTY

These bunch of appeals were directed against the impugned order dated 11.03.2014, wherein the learned Commissioner of Customs (Appeals), Mumbai-II has disposed of 71 numbers of appeals filed by the appellants in respect of enhancement of value in the Bills of Entry (B/Es) filed by them before the customs authorities at the port of import. Out of 71 numbers of appeals, the learned Commissioner (Appeals) has rejected 31 numbers of appeals on the ground that the appeals were preferred before him beyond the prescribed time limit of sixty days from the date of finalization of the B/Es. With regard to the remaining number of 40 appeals, the learned Commissioner (Appeals) has remanded the matter back to the proper officer for passing of speaking order in terms of sub-section (5) of Section 17 of the Customs Act, 1962.

2. Insofar as rejection of 31 numbers of appeals filed by the appellants, we find that though the said appeals were preferred beyond the prescribed time period of 60 days, but were filed within the time period of 90 days from the date of finalization of the B/Es. We find from the impugned order at paragraph no. 7 that the learned Commissioner (Appeals) has not assigned any specific reasons or grounds for non-condonation of delay, in respect of the appeals filed within the condonable period prescribed under the statute. The said paragraph recorded in the impugned order is quoted herein below: -

> *"7. I find that the appellant has filed these 31 appeals (Sr. No. 1-15, 18, 25, 43, 44, 52, 53, 62-71 of the above table) on 28.11.2013 & 05.12.2013, which is over and above the appeal period of 60 days. Proviso to section 128(1) stated that 'Provided that the Commissioner*

(Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days'. However, I do not find essence in the reasons cited by the appellant and not being convinced, without going into the merits of the cases, I decide these 31 appeals as time barred."

3. In view of the fact that the appellants had specifically prayed for condoning the delay in late filing of appeal within the condonable period of 90 days from the date of finalization of the B/Es, the same should have been considered by the learned Commissioner (Appeals). However, we find that he has not assigned any reason in support of either condoning the delay or non-consideration of the condonation of delay application filed by the appellants. It is also an admitted fact on record that the office of the Commissioner (Appeals) has not issued any defect memo to the appellants in pointing out the mistake that there is a delay in filing the appeal and they should have filed the delay condonation application for condoning the same. Therefore, we are of the view that rejection of appeal by the learned Commissioner (Appeals) on the ground of time bar aspect cannot be sustained for judicial scrutiny and therefore, the impugned order rejecting 31 numbers of appeals is liable to be set aside. Accordingly, the impugned order, rejecting 31 numbers of appeals as listed out in paragraph 7 at page no. 8 in the impugned order is set aside and the appeals are allowed by way of remand to the learned Commissioner (Appeals) for consideration of the delay condonation application filed by the appellants and for passing of a speaking order in respect of the appeals filed by them.

4. With regard to the remaining 40 numbers of appeals filed by the appellants, we find that the appellants had self-assessed the B/Es in terms of Section 17(1) *ibid*. The self-assessment done by the appellants was not accepted by the Department and accordingly, they had proceeded against the appellants for re-determination of value by way of re-assessment as provided under sub-section (4) of Section 17 *ibid*. Re-assessment of the B/Es is a choice of the proper officer. In other words, the proper officer may accept the self-assessment or may disagree with the self assessment. Since in the present case, the proper officer has felt that the self assessment done by the appellants-importer is not correct, then under sub-section (5) of Section 17 *ibid*, he has to mandatorily pass a speaking order in explaining the reason for changing the stand in the assessment done in the B/Es. However, the proper officer has not complied with the

requirement of sub-section (5) of Section 17 *ibid*. Therefore, under such circumstances, the learned Commissioner (Appeals) has remanded the matter back to the proper officer for passing of the speaking order. Therefore, we do not find any infirmity in the impugned order, insofar as it has remanded the matter back to the proper officer of customs for passing of the speaking order under sub-section (5) of Section 17 *ibid*. Thus, the appeals in respect of 40 numbers of B/Es filed by the appellants are dismissed.

5. Considering the fact that sub-section (5) of Section 17 *ibid* has provided the time limit of 15 days for passing of the speaking order, we direct the proper officer of customs to comply with the process of passing of the speaking order within a period of 15 days from the date of receipt of this order.

6. All the appeals filed by the appellants are disposed of in the above terms.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha